

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **AUG 23 2013**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Elizabeth McCormick

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (the director), denied the employment-based immigrant visa petition. The petitioner appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is an internet infrastructure service company. It seeks to employ the beneficiary permanently in the United States as a QA Engineer IV. An ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act) provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The job qualifications requirements are found on Part H of the ETA Form 9089. As to the certified job's title, duties and minimum level of education and experience required for the proffered position in this matter, Part H-4 of the ETA Form 9089 indicates that the minimum educational requirements for the certified position of QA Engineer IV is a bachelor's degree in Computer Science, Information Systems, Mathematics or a related field. Part H-6 indicates that 72 months of experience in the proffered position is required. Part H-7 and H-8 indicate that no alternate field of study would be acceptable. Part H-9 states that a foreign educational equivalent is acceptable. Part H-10 states that 72 months of experience in any related field would also be accepted. The record reflects that the beneficiary has more than 72 months of experience in a related field.

Based on the evidence submitted, including the beneficiary's Bachelor of Science degree from the [REDACTED] and his Master of Computer Applications degree from [REDACTED] and the two credential evaluations, the petitioner has demonstrated that the beneficiary holds the equivalent of a single degree from an accredited college or university in the United States which satisfies the requirements of the Form ETA 9089 and the regulation under section 8 C.F.R.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

§ 204.5(l)(3)(ii)(C). The AAO concludes that the beneficiary has a “United States baccalaureate degree or a foreign equivalent degree” and the work experience required by the labor certification and, thus, qualifies for preference visa classification under section 203(b)(2) of the Act.

The record also reflects that the petitioner has the ability to pay the proffered wage from the priority date onwards.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.